

**Security Council**

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**Security Council Committee established pursuant
to resolution 1737 (2006)****Note verbale dated 2 May 2008 from the Permanent Mission
of Australia to the United Nations addressed to the Chairman
of the Committee**

The Permanent Mission of Australia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1737 (2006), and has the honour to refer to the Chairman's note of 27 March 2008 regarding national implementation of United Nations Security Council resolution 1803 (2008).

The Permanent Mission of Australia to the United Nations has the honour to convey Australia's report on steps it has taken to implement Security Council resolution 1803 (see annex).



Annex to the note verbale dated 2 May 2008 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

Report to the Committee on the Steps Taken by Australia to Implement Resolution 1803 (2008) of 3 March 2008

Paragraph 13 of resolution 1803 (2008), adopted by the United Nations Security Council on 3 March 2008, "Calls upon all States to report to the Committee within 60 days of the adoption of this resolution on the steps they have taken with a view to implementing effectively paragraphs 3, 5, 7, 8, 9, 10 and 11 above". This report outlines the steps taken by Australia to implement these paragraphs.

Paragraph 3 "Calls upon all States to exercise vigilance and restraint regarding the entry into or transit through their territories of individuals who are engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or for the development of nuclear weapon delivery systems".

The Australian Government has in place established procedures to screen visa applicants and visa holders for connections to weapons of mass destruction. These procedures are the vehicle by which Australia is implementing paragraph 3. Australia has a universal visa system. Non-citizens are required to have a visa that permits them to travel to and enter Australia (with limited exceptions) and non-citizens must hold visas that permit them to remain in Australia.

Under Australian legislation (the *Migration Regulations 1994*), the Australian Minister for Foreign Affairs is able to make a determination that a visa applicant is a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction (Public Interest Criteria 4003(b) and 4003A). Where the Minister for Foreign Affairs makes such a determination, the Minister for Immigration and Citizenship would refuse to grant the visa in accordance with section 65 of the *Migration Act 1958*. Should the Minister for Foreign Affairs determine that a visa holder is a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction (Regulation 2.43(1)), visa cancellation may occur under the *Migration Act 1958*.

Paragraph 3 further "decides in this regard that all States shall notify the Committee established pursuant to paragraph 18 of resolution 1737 (2006) (herein 'the Committee') of the entry into or transit through their territories of the persons designated in the Annex to resolution 1737 (2006), Annex I to resolution 1747 (2007) or Annex I to this resolution, as well as of additional persons designated by the Security Council or the Committee as being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or for the development of nuclear weapon delivery systems, including through the involvement in procurement of the prohibited items, goods, equipment, materials and technology specified by and under the measures in paragraphs 3 and 4 of resolution 1737 (2006), except where such entry or transit is for activities directly related to the items in subparagraphs 3 (b) (i) and (ii) of resolution 1737 (2006)".

The Department of Immigration and Citizenship (DIAC) maintains a Movement Alert List (MAL), which includes the names of non-citizens whose eligibility for a visa grant or continuing eligibility to hold a visa may be in issue. The names of all visa applicants are checked against the MAL prior to any decision to grant a visa to enter Australia.

All individuals designated by the Security Council in the annex to resolution 1737 (2006), annex I to resolution 1747 (2007), and both annex I and II to resolution 1803 (2008) have been placed on the MAL.

The MAL is electronically accessible by DIAC officers posted to Australia's diplomatic and consular missions worldwide. A complete MAL update is sent electronically at least daily to Australia's overseas missions. Additional checks are also undertaken at Australian entry points to ensure that any person listed on the MAL subsequent to a visa grant is identified.

Where there may be a potential match between a visa applicant and an individual listed on the MAL, further enquiries must be made before a visa can be granted, or, if it has already been granted, to consider whether it can or must be cancelled. Led by DIAC, this is a whole-of-government consultative process, which aims to resolve the MAL alert by examining available data on both the applicant and the MAL listed individual. In the event that an individual designated in the annex to resolution 1737 (2006), annex I to resolution 1747 (2007) or annex I to resolution 1803 (2008) is detected to be entering into or transiting through Australia, arrangements will be made by DFAT to notify the Committee.

Paragraph 5 "Decides that all States shall take the necessary measures to prevent the entry into or transit through their territories of individuals designated in Annex II to this resolution as well as of additional persons designated by the Security Council or the Committee as being engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or for the development of nuclear weapon delivery systems, including through the involvement in procurement of the prohibited items, goods, equipment, materials and technology specified by and under the measures in paragraphs 3 and 4 of resolution 1737 (2006), except where such entry or transit is for activities directly related to the items in subparagraphs 3 (b) (i) and (ii) of resolution 1737 (2006) and provided that nothing in this paragraph shall oblige a State to refuse its own nationals entry into its territory".

In accordance with the *Migration (United Nations Security Council) Regulations 2007* (the Regulations), where a person is subject to a resolution of the United Nations Security Council, the person may be unable to be granted a visa, or may have their visa cancelled. The Minister for Immigration and Citizenship specifies by legislative instrument the relevant resolutions to be covered by the Regulations. This legislative instrument has been revised to incorporate resolution 1803 (2008).

Paragraph 7 "Decides that the measures specified in paragraphs 12, 13, 14 and 15 of resolution 1737 (2006) shall apply also to the persons and entities listed in Annexes I and III to this resolution, and any persons or entities acting on their behalf or at their direction, and to entities owned or controlled by them and to persons and entities determined by the Council or the Committee to have assisted

designated persons or entities in evading sanctions of or in violating the provisions of, this resolution, resolution 1737 (2006) or resolution 1747 (2007)".

Paragraph 7 is implemented in Australia by Regulations 15, 16 and 17 of the *Charter of the United Nations (Sanctions — Iran) Regulations 2008*.

Regulation 15 prohibits making an asset available, directly or indirectly, to, or for the benefit of a designated person or entity, or a person or entity acting on behalf of or at the direction of a designated person or entity, or an entity owned or controlled by a designated person or entity, including through illicit means.

Regulation 16 prohibits a person who holds a controlled asset from using or dealing with the asset, or allowing the asset to be used or dealt with, or facilitating the use of, or the dealing with, the asset. A "controlled asset" is an asset that is owned or controlled by a designated person or entity, or a person or entity acting on behalf of or at the direction of a designated person or entity, or an entity owned or controlled by a designated person or entity, including through illicit means.

For the purposes of the Regulations, "designated person or entity" means a person or entity designated in the Annex to resolution 1737 (2006) or designated by the Committee or by the Security Council for paragraph 12 of resolution 1737 (2006). This has the effect of incorporating by reference all persons and entities described in resolution 1737 (2006), resolution 1747 (2007), resolution 1803 (2008) and in any future decision by the Committee or the Security Council, as being subject to paragraph 12 of resolution 1737 (2006).

Regulation 17 provides that the Minister for Foreign Affairs may, on application, grant a person a permit authorizing the making available of an asset to a person or entity that would otherwise contravene Regulation 15, or a use of, or a dealing with, a controlled asset that would otherwise contravene Regulation 15, in relation to any of the circumstances permitted by, and subject to the conditions set out in, paragraphs 13, 14 and 15 of resolution 1737 (2006).

Regulations 15 and 16 have been specified by the Minister for Foreign Affairs as United Nations sanction enforcement laws. Contravention of a United Nations sanction enforcement law, or a condition of a permit granted under a United Nations sanction enforcement law (such a permit granted under Regulation 17) is an offence under section 27 of the *Charter of the United Nations Act 1945*. The maximum penalties upon conviction for such an offence are, for individuals, 10 years' imprisonment or a fine the greater of 2,500 penalty units or 3 times the value of the transaction (if this can be calculated). For bodies corporate, the offence is an offence of strict liability unless it can prove that it took reasonable precautions, and exercised due diligence, to avoid contravening the law. The maximum penalty for bodies corporate upon conviction is a fine the greater of 10,000 penalty units or 3 times the value of the transaction (if this can be calculated). A penalty unit is equivalent to AU\$110 under section 4AA of the *Cth Crimes Act 1914*.

Paragraph 8 "Decides that all States shall take the necessary measures to prevent the supply, sale or transfer directly or indirectly from their territories or by their nationals or using their flag vessels or aircraft to, or for use in or benefit of, Iran, and whether or not originating in their territories, of:

(a) all items, materials, equipment, goods and technology set out in INFCIRC/254/Rev.7/Part 2 of document S/2006/814, except the supply, sale or

transfer, in accordance with the requirements of paragraph 5 of resolution 1737 (2006), of items, materials, equipment, goods and technology set out in sections 1 and 2 of the Annex to that document, and sections 3 to 6 as notified in advance to the Committee, only when for exclusive use in light water reactors, and where such supply, sale or transfer is necessary for technical cooperation provided to Iran by the IAEA or under its auspices as provided for in paragraph 16 of resolution 1737 (2006);

(b) all items, materials, equipment, goods and technology set out in 19.A.3 of Category II of document S/2006/815".

Paragraph 8 is implemented in Australia by Regulations 10 and 11 of the *Charter of the United Nations (Sanctions — Iran) Regulations 2008*.

Regulation 10 prohibits the supply of the following goods to Iran from Australia, or by an Australian, or using an Australian flag vessel or flag aircraft, without a permit issued by the Minister for Foreign Affairs, or validly issued under the law of another country in compliance with its obligations under resolution 1737 (2006): goods mentioned in documents S/2006/814 and S/2006/815; goods that have been determined by the Security Council or the Committee for paragraph 3 (d) of resolution 1737 (2006); goods that have been listed by the Minister for Foreign Affairs by legislative instrument on the basis that he is satisfied that they would, if supplied to Iran, contribute to enrichment-related, reprocessing or heavy water-related activities; or the development of nuclear weapon delivery systems; or the pursuit of activities about which the International Atomic Energy Agency has expressed concern or identified as outstanding.

Regulation 11 only allows the Minister for Foreign Affairs to issue a permit for the following goods, subject to the conditions imposed by resolution 1737 (2006): goods mentioned in B.1 of INFCIRC/254/Rev.8/Part 1 in Security Council document S/2006/814 — provided that the goods are for light water reactors; low-enriched uranium mentioned in A.1.2 of INFCIRC/254/Rev.8/Part 1 in Security Council document S/2006/814 — provided that the low-enriched uranium is incorporated in assembled nuclear fuel elements for light water reactors; goods mentioned in the annex to INFCIRC/254/Rev.7/Part 2 of Security Council document S/2006/814 — provided that the goods are for exclusive use in light water reactors and necessary for technical cooperation provided to Iran by the International Atomic Energy Agency or under the Agency's auspices as mentioned in paragraph 16 of resolution 1737 (2006). The Minister may also grant a permit in situations referred to in, and subject to the conditions imposed by, paragraph 9 of resolution 1737 (2006).

Thus, the Minister for Foreign Affairs may not issue a permit for the supply to Iran of the goods referred to in paragraph 8 of resolution 1803 (2008). Any attempt to do so by an Australian, a person from Australia, or a person using an Australian flag vessel or flag aircraft would contravene Regulation 10.

Regulation 10 has been specified by the Minister for Foreign Affairs as a United Nations sanction enforcement law. Contravention of a United Nations sanction enforcement law, or a condition of a permit granted under a United Nations sanction enforcement law (such as a permit granted under Regulation 11) is an offence under section 27 of the *Charter of the United Nations Act 1945*. The maximum penalties upon conviction for such an offence are, for individuals, 10 years'

imprisonment or a fine the greater of 2,500 penalty units or 3 times the value of the transaction (if this can be calculated). For bodies corporate, the offence is an offence of strict liability unless it can prove that it took reasonable precautions, and exercised due diligence, to avoid contravening the law. The maximum penalty for bodies corporate upon conviction is a fine the greater of 10,000 penalty units or 3 times the value of the transaction (if this can be calculated).

Paragraph 9 "Calls upon All States to exercise vigilance in entering into new commitments for public provided financial support for trade with Iran, including the granting of export credits, guarantees or insurance, to their nationals or entities involved in such trade, in order to avoid such financial support contributing to the proliferation sensitive nuclear activities, or to the development of nuclear weapon delivery systems, as referred to in resolution 1737 (2006)".

The Australian Minister for Trade has issued a direction to the Export Finance Insurance Corporation under the *Export Finance Insurance Corporation Act 1991*, and initiated the development of guidelines for the Australian Trade Commission (Austrade) under the *Export Market Development Grant Act 1997*, to ensure that all decisions related to public provided financial support for trade with Iran take into account the requirements set out in paragraph 9.

Paragraph 10 "Calls upon all States to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran, in particular with Bank Melli and Bank Saderat, and their branches and subsidiaries abroad, in order to avoid such activities contributing to the proliferation sensitive nuclear activities, or to the development of nuclear weapon delivery systems, as referred to in resolution 1737 (2006)".

The Australian Government collects information about the activities of financial institutions based in Australia in relation to banks domiciled in Iran and their overseas branches and subsidiaries. Upon request, the Australian Federal Police (AFP) will examine a prescribed person or entity for any financial activity in relation to Iran and advise relevant agencies as required. The Australian Transaction Reports and Analysis Centre (AUSTRAC), the country's specialist financial intelligence unit, collects all customer-based international funds transfer instructions and may also receive suspicious reports relating to customers of financial institutions who have dealings with Iran or who are designated under United Nations Security Council sanctions regimes.

AUSTRAC has also issued an information circular (No. 57) to industry drawing attention to Security Council resolution 1803 (2008) and its extension of sanctions against Iran imposed by resolutions 1737 (2006) and 1747 (2007). The circular also refers to Australian law and regulations that give effect to these resolutions (as set out above), as well as the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*. The circular reminds financial institutions of the need to be aware that other countries may impose sanctions or expand existing sanctions on Iran autonomously and that such measures may have implications for Australian financial institutions dealing with Iran.

The circular also reminds entities regulated by AUSTRAC to take into account Security Council resolutions and Australian law when considering whether particular transactions should be reported to AUSTRAC as suspicious.

Paragraph 11 "Calls upon all States, in accordance with their national legal authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, to inspect the cargoes to and from Iran, of aircraft and vessels, at their airports and seaports, owned or operated by Iran Air Cargo and Islamic Republic of Iran Shipping Line, provided there are reasonable grounds to believe that the aircraft or vessel is transporting goods prohibited under this resolution or resolution 1737 (2006) or resolution 1747 (2007)".

The Australian Customs Service (Customs) administers the *Customs Act 1901* and the *Customs (Prohibited Exports) Regulations 1958*. This legislation provides for Customs Officers to search vessels, aircraft and inspect cargo within Australian jurisdiction. It also makes a requirement for cargo to be reported to Customs prior to import to and export from Australia. Under this legislation, authority to search vessels, aircraft and cargo does not need to be based upon any reasonable grounds to believe that the aircraft or vessel is transporting prohibited goods. Consequently, Australian law enforcement already has a broad mandate that can incorporate authority to intercept, search and inspect vessels and goods as called for in resolution 1803 (2008). Further to this, specific legislation, namely *Section 233BABAC Customs Act 1901* and *Regulation 13CQ Customs (Prohibited Exports) Regulations 1958* has been enacted to identify special offences for exportation of United Nations-sanctioned goods and exportation of certain goods to Iran.

Customs Integrated Cargo System (ICS) is the electronic system through which all cargo coming to or from Australia is required to be reported. Customs uses ICS to profile, target, identify and interdict cargo that might be prohibited or of risk. Customs can use this system to target and subsequently inspect cargo that might be going to or coming from Iran that might be owned or operated by Iran Air Cargo and Islamic Republic of Iran Shipping Line. Similarly, related vessels or aircraft can be identified and inspected by Customs to meet the terms of resolution 1803 (2008).